

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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TEMPLE SINAI OF BERGEN COUNTY,

Plaintiff,

**ORDER**

CV 07-2357 (LDW)(ARL)

-against-

ARNOLD AMSTER,

Defendant.

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**LINDSAY, Magistrate Judge:**

By letter dated September 5, 2007, defendant Arnold Amster moves for an order dismissing the complaint pursuant to Federal Rule of Civil Procedure 37 for the plaintiff's failure to respond to his discovery requests. According to the defendant, plaintiff's responses to his document demands and interrogatories were due on August 31, 2007 and, to date, there has been no response. The application is unopposed.

The application is denied. Plaintiff is directed to respond to all of the outstanding discovery requests by **October 20, 2007**. The plaintiff is warned that the failure to do so may result in a recommendation that this case be dismissed for failure to prosecute. See Fed. R. Civ. P. 37(b) & 41(b). Rule 41(b) gives the district court power to dismiss a complaint "for failure to comply with a court order, treating noncompliance as a failure to prosecute." Simmons v. Abruzzo, 49 F.3d 83, 87 (2d Cir. 1995). It is well-settled that a dismissal under Rule 41(b) "operates as an adjudication on the merits and that such a dismissal is with prejudice." Hoffman v. Wisner Classic Mfg. Co., 927 F. Supp. 67, 71 (E.D.N.Y. 1996) (citing Link v. Wabash R. Co., 370 U.S. 626, 630-32 (1962)).

Dated: Central Islip, New York  
September 24, 2007

**SO ORDERED:**

\_\_\_\_\_/s/\_\_\_\_\_  
ARLENE ROSARIO LINDSAY  
United States Magistrate Judge